

AN ORDINANCE **97602**

AMENDING CHAPTER 35 OF THE CITY CODE OF SAN ANTONIO, TEXAS BY AMENDING SECTION 35-523, TREE PRESERVATION, REGARDING TREE PROTECTION REQUIREMENTS, TREE RETENTION RATIO, TREE ROOT PROTECTION ZONE, TREE WARRANTY REQUIREMENTS AND RENUMBERING TABLES 523-2 AND 523-3 AND REFERENCES AND BY AMENDING SECTION 35-511, LANDSCAPING, REGARDING UNDERSTORY PRESERVATION AND PARKING LOT SHADING.

WHEREAS, the City Council, in order to protect the health and general welfare of the City, passed and approved a tree preservation ordinance, Ordinance No. 85262, on December 5, 1996; and

WHEREAS, the City Council amended provisions of the City Code regarding tree preservation when they approved Ordinance Number 97332 on March 13, 2003.

WHEREAS, the City Council reserved certain of the amendments proposed for inclusion in Ordinance Number 97332 for further discussion with stakeholders; and

WHEREAS, the Planning Commission and Zoning Commission have previously conducted public hearings and made recommendations regarding the amendments contained in this ordinance; and

WHEREAS, the City Master Plan provides that the tree preservation ordinance shall be strengthened as needed,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Code of San Antonio, Texas is hereby amended by adding the language that is underlined (added) and deleting the language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance.

SECTION 2. Chapter 35, Article 5, Section 35-523 is amended as follows:

35-523 *Tree Preservation*

* * * * *

(e) *Minimum tree preservation requirements*

(1) Generally

Table ~~523-1~~ **523-2** establishes the minimum percentage of all diameter inches or percent tree canopy of Significant or Heritage trees that must be preserved or mitigated. For single family dwellings, developers and builders may elect to preserve trees at the platting or permitting stage; if a developer or builder elects to preserve at the platting stage, this method must be used throughout completion of the project.

Table 523-1 523-2		
	Single-family Dwellings	Multi-family and Non-residential uses
Significant Trees	<u>35% within each platted lot, excluding street right of way and easements, plus each builder on a single family dwelling lot shall also be required to plant two, 2" caliper new trees, which trees shall generally be native, large canopy trees.</u> 50% within the easements and the platted setback or survey areas (20' from front and rear property lines) excluding street rights-of-way plus the planting of two (2) additional two (2) inch caliper Class I trees	40% <u>25% within the entire site, excluding the street rights-of-way and easements</u>
<u>Significant Trees under 6" DBH</u>	<u>35% within each platted lot, excluding the street right of way and easements OR 35% of the number of total count of all such trees</u>	<u>40% within the entire site, excluding street right of way and easements OR 40% of the number of total count of all such trees</u>
Heritage Trees-Entire site excluding the street rights-of-way	<u>100% within each platted lot</u>	<u>100% within the entire site</u>
100 year flood plain(s)	<u>80% of the trees within the flood plain, which shall not apply toward preservation requirements on the remainder of the lot</u>	<u>80% of the trees within the flood plain, which shall not apply toward preservation requirements on the remainder of the site</u>
<u>Mitigation Maximum</u>	<u>Up to 90% of Significant and Heritage trees may be mitigated rather than preserved</u>	<u>Up to 90% of Significant and Heritage trees may be mitigated rather than preserved</u>

(2) Calculation of Preservation Ratios

All percentages relating to preservation stated within this section shall be based on the initial tree survey. Any subsequent redevelopment of property must minimally preserve the applicable percentage of the total diameter inches of protected trees as indicated by the initial tree survey.

(3) ~~Tree Retention Ratio~~

~~A minimum of ten (10) percent of the total diameter inches within the surveyed area must be retained in their original location.~~

(4) Tree Stand Delineation Alternative

As an alternative to a tree survey, a tree stand delineation may be used to meet the preservation requirements (see submittal requirements Section 35-B125). The amount of tree area(s) required to be preserved is twenty-five (25) percent. Within the tree save area, the existing understory must be included/preserved to meet the requirements of this elective option.

(4) ~~(5)~~ Mitigation

Protected trees that are required to be preserved are to be mitigated at the ratio described in Table 523-2 ~~523-3~~.

(5) ~~(6)~~ Diversity and Desirability

As the particular site conditions warrant, the applicant shall make a reasonable effort to preserve a diversity of species of trees as determined by the city arborist.

(6) ~~(7)~~ Site Design

The location of all proposed buildings and improvements shall be oriented by the applicant, to the extent the applicant determines possible, in a manner which allows for preserving of the greatest number of trees and in doing so the applicant is encouraged to design by taking into consideration the site's limitations and assets. Trees located within the existing right-of-way shall not be counted as it pertains to the minimum preservation percentage. Applicants are encouraged to preserve trees to meet the landscape and streetscape standards which could reduce or eliminate the irrigation requirements.

(7) ~~(8)~~ Rights of Way

Unless otherwise allowed by this division, trees of a protected size or larger located within existing rights-of-way or easements may be damaged, destroyed, or removed only if prior approval is granted by the city arborist.

(8) ~~(9)~~ Trees on Public Property

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The city shall have the right to maintain trees, plants, and shrubs within the lines of all public property as may be necessary to ensure the safety, protect facilities and improvements, and maintain the health and aesthetics of such public grounds. In order to achieve the above, the city or its municipal utility entities may remove or cause or order to be removed any tree which is located on public property and determined to be in conflict with a public purpose or to be a public hazard through coordination with the city arborist.

Unless specifically authorized by the city, no person shall knowingly cut, carve, transplant, or remove any tree; attach any rope, wire, nails, advertising posters, or other contrivances to any tree; or allow any substance, solid, liquid, gas, or fire to injure any tree or portion thereof on public property.

(9) ~~(10)~~ Historic Trees

In order to protect historic trees, as defined, the city arborist shall defer the approval of tree preservation plans to review by the director of planning who shall seek the advice of the historic design and review commission in instances where a historic tree is proposed to be removed. The commission may recommend additional replacement standards, recommend a cash payment to be deposited to the tree replacement fund to offset the cost of future tree planting on public property, or recommend that the application for permit and tree preservation plan be denied. Provided, however that no later than thirty (30) days after the final application for removal of the historic tree was received, the director of development services shall advise the applicant by certified mail, return requested, or hand delivery of his decision. The final application will be deemed approved if not acted upon by the director of planning before the expiration of the thirty-day time period herein established. Such action may be appealed pursuant to Section 35-489 of this Chapter.

(f) *Mitigation/alternative mitigation methods*

Significant or Heritage trees may be removed in excess of the minimum preservation requirement contained in subsection (e) provided the excess removal is properly mitigated.

If mitigation is required to compensate for removing trees in excess of the number of diameter inches allowed to be removed within the surveyed area to be calculated for tree preservation under the minimum preservation requirements, the mitigation may be achieved in one of the ways prescribed in Table 523-2 ~~523-3~~, below:

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Table 523-2 523-3 Mitigation		
(A) Method	(B) Description	(C) Restrictions
1. Establishment and maintenance of new trees at the required ratio on-site	Significant 1:1 Heritage 3:1	No more than twenty-five (25) percent of the replacement trees shall be of the same species; for the purposes of mitigation, Heritage designation does not apply to Ashe Juniper.
2. Payment to the tree mitigation fund	See subsection (n) of this Section.	See subsection (n) of this Section.
3. Protection and Maintenance of smaller trees within Surveyed Area	Protection and maintenance of existing trees within the surveyed area that are smaller than the size requirements for a protected tree.	Such trees must be at least two and one-half (2 ½") inches DBH. See Column B ratios for diameter-inches required.
4. Protection and Maintenance of natural areas within the Surveyed Area	Protection and maintenance of existing natural areas, i.e., prairie, steep slope, etc.	Area(s) must contain desirable plants as determined by the city arborist and/or by Texas Parks and Wildlife Dept.

In considering a mitigation method, the city arborist may weigh the value of smaller trees, clumps of trees, and natural vegetation that could be retained to meet the requirements of this section, such as mitigation method above, or the amount of vegetation to be retained on the site and/or added according to a landscape plan to determine the extent additional trees may not be required. For these reasons, indiscriminate clearing of smaller trees and shrubs or understory is discouraged.

(g) 100 year Flood Plain(s)

Significant trees shall be preserved at eighty (80) percent preservation within the 100 year flood plains. Heritage trees shall be preserved at one hundred (100) percent preservation within the 100 year flood plains. The 100 year flood plain shall be determined by the Flood Plain Administrator. Such trees shall be mitigated as defined in Table ~~523-2~~ 523-3. If trees are required to be removed by a governmental entity due to existing off site conditions, then mitigation shall not be required by the applicant. The City Arborist, the Director of Public Works, the Director of Development Services, and one representative from the Cibolo Creek watershed, the Leon Creek Coalition, the Salado Creek Foundation, the San Antonio River Oversight Committee, and the Land Heritage Institute (for the

Medina River) shall agree on a standard for treatment of drainage ways, which standard shall be approved by the Urban Affairs Committee of City Council.

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(i) Root protection zone

(7) Root Protection Zone

A root protection zone must be established around the trunk of each tree preserved or mitigation tree. For multi-family and non-residential construction the The root protection zone shall be an area defined by an average radius extending outward from the trunk of the tree a distance of one (1) one-half (1/2) linear foot for each inch (DBH) of the subject tree. ~~Root Protection Zones for trees in a cluster may be overlapping.~~ A minimum of 50% of the root protection zone area shall be preserved at natural grade, with natural groundcover. No cutting, filling, trenching, root disturbance, soil disturbance, or construction impacts shall occur closer to the trunk than one-half (1/2) the root protection zone radius. Filling shall be allowed to accomplish water conservation goals established by the City of San Antonio or by a public utility. Native understory vegetation within the root protection zone shall be preserved, however this requirement does not apply to root protection zone areas that have been landscaped using native, drought tolerant plants. The root protection zone may be shifted and clustered as long as there is no construction closer to the trunk than one-half (1/2) the root protection zone radius. The construction of sidewalks shall be allowed in the root protection zone, as long as excavation does not exceed three (3) inches.

The area contained within a root protection zone required under this subsection must be left in a pervious condition after construction and development are completed unless approved alternative construction methods are used. The arborist shall establish a written set of technical criteria on which such approval shall be based. During construction activity on the site, at least six-inch layer of a coarse mulch shall be placed and maintained over the root protection zone. The impervious cover may encroach within the root protection zone if said encroachment is approved by the city arborist.

(2) Warranty

In lieu of establishing root protection zone(s) as prescribed in Section 35-523 (i) or adhering to alternate construction methods as approved by the city arborist, a developer or property owner may choose to provide a Tree Preservation Warranty for multi-family and non-residential construction only. In the event a developer or property owner chooses to provide a Tree Preservation Warranty as provided for herein ~~for any tract in San Antonio, Texas (the "Property")~~, the owner of the Property must provide a Tree Preservation Warranty to the City arborist, ~~in the form set out herein,~~ which shall obligate the then owner of the Property, ~~as well as any successor owner of the Property (herein collectively the "Owner")~~, to replace any tree (or trees) reflected on the tree survey and which are the subject of the warranty. The term of the warranty shall be five (5) years from the date that a building permit is filed for building construction projects or five (5) years from the date construction is commenced for infrastructure improvements related to development projects. Each tree that is covered

~~by a Tree Preservation Warranty must be identified on a tree survey prepared in accordance with section 35-B123(c)(1)A and submitted with the Tree Preservation Warranty which is submitted with a Tree Preservation Warranty (the "Approved Tree Survey"). If any tree required to be preserved and which is the subject of a Tree Preservation Warranty, if it (they) shall die during the term of the Tree Preservation Warranty, the tree shall be replaced in accordance with the mitigation provisions of Subsection 35-523(f), with a tree (or trees) of the same species as the tree (or trees) reflected on the Approved Tree Survey, and of at least the same size dbh (or total caliper inches if more than one tree is planted to replace a dead Significant tree) as reflected on the Approved Tree Survey. However, if a Heritage tree (or trees) dies during the term of the Tree Preservation Warranty, each Heritage tree shall be replaced by trees whose caliper inches total at least three times the DBH of each dead Heritage tree. All replacement trees shall be planted in accordance with the standards set forth in section 35-523(l). The City may require such Owner to replace a tree (or trees) that has died at any time during the term of the Tree Preservation Warranty, and, if such Owner fails to replace the tree within 90 days of the city's written request to replace same, the city at its sole option may refuse to issue any new building permits, accept any development application, or accept any infrastructure improvements from such owner. Nothing in this subsection shall exclude any and all remedies otherwise provided by law. shall have the right, but not the obligation, to replace the tree (or trees) at the Owner's cost, and file a lien against the Property to collect the cost of same from the Owner. Each tree that is covered by a Tree Preservation Warranty must be identified on a tree survey prepared in accordance with section 35-B123(c)(1)A, and submitted with the Tree Preservation Warranty.~~

The Tree Preservation Warranty shall be filed in the records of the Development Services Department of the City. ~~of record in the Real Property Records of Bexar County, Texas, and shall provide the following:~~

~~This Tree Preservation Warranty is provided in accordance with the requirements of Article 35-523 of the Unified Development Code of the City of San Antonio, and in consideration of the approval by the City of San Antonio of [describe plans/tree plan], and is to be appurtenant to and shall run with the [describe property], and shall be an obligation of the owner of said property, and his/her/its successors and assigns in the ownership of said property, to replace any tree on said property which dies during the term hereof in the manner required in said Article 35-523; but conveyance of the property shall not relieve the owner of the property or any successor in interest in the property from personal liability for fulfillment of the obligations created hereunder.~~

~~The city may charge reasonable fees for recordation of the Tree Preservation Warranty. Upon the expiration of five (5) years after the Tree Preservation Warranty is filed of recorded, as herein required, the property owner of record at that time may request a Tree Warranty Inspection of the Property by contacting the Office of the City Building Inspector and requesting same. If the trees referenced in the Approved Tree Survey have not died or have been replaced as required by this section, the city will execute a form of Release of Tree Preservation Warranty, in recordable form, which the then owner of the Property may file of record in the Real Property Records of Bexar County; and from and after the recording of the same, the Tree Preservation Warranty and the Owner's obligations thereunder shall be~~

~~of no further force or effect.~~ The seller owner of property subject to a Tree Preservation Warranty shall provide a copy of the warranty and attached tree survey ~~disclose such~~ to prospective buyers.

(j) Tree protection during construction

(1) Generally

It is the applicant's responsibility to insure that all parts of the tree preservation plan are transferred to each appropriate person concerned with the development project.

(2) Protection Barrier

Except for single family residential construction, a protection barrier shall be erected at the edge of the root protection zone for all trees, understory and/or natural areas to be preserved to meet the requirements of the Tree Preservation, Landscape and/or Streetscape standards. The barrier shall be in place before any site work is initiated and maintained throughout the construction process. However, on one side of the tree the protective barrier can be erected ~~on one side,~~ a minimum distance of sixty (60) inches from the trunk(s) of individual Significant, Heritage or mitigation trees or islands of such trees and understory and maintained until construction is completed. This protective barrier may be comprised of snow fencing, vinyl construction fencing, chain link, geotextile material or other similar sturdy material. During construction, no excess soil, additional fill, equipment, liquids or construction debris shall be placed inside the protective barrier nor shall any soil be removed within the barrier.

(3) Grading

The proposed finished grade within the root protection zone of any tree to be preserved shall not be raised or lowered more than three (3) inches, ~~except for single family residential development where the grade may be raised or lowered six (6) inches.~~ Approved welling methods for tree preservation may be used within the root protection zone. Other welling and/or retaining methods may be used to protect and/or provide lateral support to the area outside the root protection zone.

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(k) General maintenance

Significant, Heritage, or mitigation trees must be maintained in a healthy condition at all times. The property owner is responsible for irrigating, fertilizing, pruning and other maintenance of all trees as needed. Except for residential development, mitigation trees that are planted on the property and that die within twelve (12) months of final inspection are subject to the mitigation requirements set forth in subsection (e) at a ratio of one (1) inch mitigation for every one (1) inch of a Significant, Heritage, or mitigation trees that dies. However, a Significant or Heritage or mitigation tree that dies from other than natural causes shall be mitigated at a ratio as defined in Table ~~523-2~~ 523-3. Any tree that dies must be replaced with another living tree of the same category type or better within ninety (90) days after notification by the city. The building official may extend this time period up to an additional ninety (90) days due to weather considerations. If the plants have not been replaced after appropriate

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notification and/or extension, the property owner shall be in violation of this section. If a public utility disturbs trees, it shall make every reasonable effort to preserve the trees and return them to their prior location and condition after the utility work is completed. If nonetheless, trees die, replacement is not the responsibility of the property owner if the death or destruction of the trees is due to the action of a public utility.

SECTION 3. Chapter 35, Article 5, Development Standards, Section 35-511(d) is amended as follows:

35-51 / *Landscaping*

* * * * *

(d) *Elective Criteria*

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(6) *Understory preservation*

15 additional points can be earned for preservation of existing vegetation adjacent to parking lots or by planting new vegetation utilizing a mixture of canopy trees with understory trees (small species) and large to small shrubs with ground plane perennials. Minimum area of understory preservation shall be ten (10) feet x twenty (20) feet. Where understory does not exist on a site under canopy trees, new understory plants from Appendix E may be installed to meet the above criteria.

~~15 additional points can be earned for parking lot shading with a mixture of canopy trees with understory trees (small species) and large to small shrubs with ground plane perennials. Minimum area 10 feet x 20 feet.~~

~~15 points additional points can be earned for parking lot screening with a mixture of canopy trees with understory trees (small species) and large to small shrubs with ground plane perennials. Minimum width is ten (10) feet.~~

Where credit for the preservation of existing understory is being requested, these areas must be protected as follows.

- A. A protective barrier must be erected around the perimeter of each understory area to be preserved and maintained until construction is completed.
- B. During construction, no excess soil, additional fill, equipment, liquids, or construction debris shall be placed inside the protective barrier nor shall any soil be removed from within the barrier.

- C. The proposed finished grade and elevation of land within six (6) feet of an understory area to be preserved shall not be raised or lowered more than three (3) inches unless compensated for by welling or retaining methods.

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SECTION 4. Chapter 35, Article 5, Development Standards, Subsection 35-511(e) is amended by amending and renumbering the subsection to Subsection 35-511(c)(6) as follows:

35-511 Landscaping

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(c) Mandatory Criteria

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(8) (e) Parking lot shading

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A. (1) Applicability

Shading shall be required for parking lots subject to this Section that are located within the project area, and any parking areas (excluding driveways or garages) in residential districts. Canopy trees, as defined in Appendix A, shall be provided to shade a minimum of twenty-five (25) percent of a parking lot. Medium or large trees may be used. A “parking lot” does not include an area used exclusively for the display of motor vehicles for sale as part of an automobile dealership.

B. (2) Calculation of Shaded Area

Existing trees preserved on a site within 12 feet of any edge of a parking lot or in an island or peninsula not less than 9 feet by 18 feet shall be calculated at 100% of the shade coverage shown in Appendix E, under “Shade Area.”

Newly planted trees planted in an island or peninsula not less than 9 feet by 18 feet shall be calculated at 75% of the shade coverage shown in Appendix E, under “Shade Area.”

Newly planted trees planted adjacent to a parking lot within 12 feet of any edge of a parking lot shall be calculated at 50% of the shade coverage shown in Appendix E, under “Shade Area.”

The following table provides the calculation for each of the two sizes of trees as required to create the minimum shade coverage:

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Large trees	1,200 square feet per one (1) tree
Large-Medium trees	875 square feet per one (1) tree
Medium trees	550 square feet per one (1) tree
Medium-Small trees	275 square feet per one (1) tree
Small trees	No small trees shall be counted for canopy requirements

The minimum shade coverage shall be determined in accordance with the following formula:

$A \times B = C$, where

A = Percent of site requiring coverage (25%)

B = Square feet of parking lot area (10,000 square feet)

C = Total number of square feet needed for shade

Example:

$$0.25 \times 10,000 = 2,500$$

Large tree = 1200 square feet of shade (2500/1200 square feet = 2 trees)

Large-Medium tree = 875 square feet of shade (2,500/875 square feet = 3 trees)

Medium tree = 550 square feet of shade (2,500/550 square feet = 5 trees)

Medium-Small tree = 275 square feet of shade (2,500/275 square feet = 9 trees)

C. (3) Design

Trees shall be planted within an island not less than 9 feet wide by 18 feet deep.

(e) (f) Variances

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SECTION 5. All other provisions of Chapter 35 of the City Code of San Antonio shall remain in full force and effect unless expressly amended by this ordinance.

SECTION 6. City Staff is directed to:

1. Prepare a strategy to encourage owners of properties that are currently legal non-conforming uses or vested in accordance with Chapter 245 of the TEXAS LOCAL GOVERNMENT CODE under the previous provisions of the UDC regarding Tree Preservation to develop such properties in accordance with the current provisions of the UDC regarding Tree Preservation. (Director of Development Services).

2. Prepare a report on tree credits issued under the previous provisions of the UDC and the current rights of property owners regarding these previously accumulated tree credits. (Director of Development Services/City Attorney).
3. Work with the Quality of Life Subcommittee of the City Council and develop by May 30, 2003 a plan to monitor measurable outcomes and report those outcomes to the City Council within one year. Staff will invite interested stakeholders, including the Citizens Tree Coalition, the Greater San Antonio Home Builders Association, the San Antonio Conservation Society, and the San Antonio Real Estate Coalition, to provide a concurrent written report to the Director of Development Services for inclusion into the staff report to City Council. (Director of Development Services).


SECTION 7. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

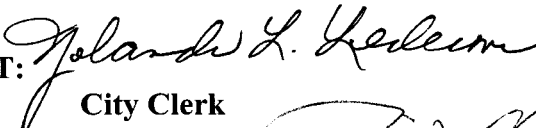
SECTION 8. Notice of these changes to the Unified Development Code shall not require the publication in an official newspaper of general circulation in accordance with Chapter 35, Article IV, Division 1, Table 403-1.

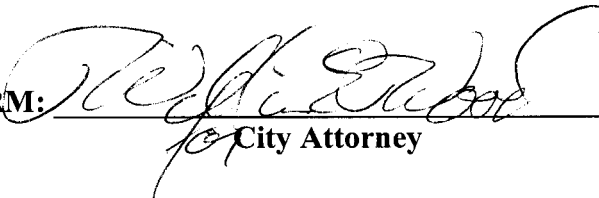
SECTION 9. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing code.

SECTION 10. This ordinance shall become effective immediately upon passage by eight or more votes otherwise this ordinance becomes effective May 18, 2003.

PASSED AND APPROVED this the 8th day of May, 2003.


M A Y O R
EDWARD D. GARZA

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
City Attorney